U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: LIN 01 188 54079 OFFICE: NEBRASKA SERVICE CENTER DATE: JAN 02 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 USC 110(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: Self-represented

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a nonprofit public university with 6,406 employees. It seeks a one-year continuation of the beneficiary's previously approved employment as a Research Associate.

The director denied the petition because he found that the petitioner had failed to obtain and submit a certification from the Department of Labor that it had filed a labor condition application (LCA) prior to filing the petition. On appeal, the petitioner submits a brief.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

> (A) theoretical and practical knowledge application of a body of highly specialized knowledge, and
>
> (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

8 C.F.R. 214.2(h)(4)(ii) further defines the term "specialty occupation" as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

With the initial petition, which was submitted on May 31, 2001, the petitioner submitted a copy of a completed LCA. The copy submitted, however, contained no evidence that it had been certified by the Department of Labor.

The director requested that the petitioner submit additional evidence pertinent to the petition. Specifically, the director requested that the petitioner provide an LCA which had been endorsed and signed by the Department of Labor. In response, counsel for the petitioner submitted an LCA which had been submitted to the Department of Labor, and certified, on August 3, 2001. The director denied the petition because the petitioner did not possess a certified LCA prior to submitting the petition.

On appeal, the petitioner submitted a brief describing various difficulties encountered in obtaining a certification from the Department of Labor. The petitioner noted that the beneficiary's employment approval had been nearing expiration while the petitioner sought the certification. The petitioner stated that the difficulties and delays encountered while seeking the certification made submission of the certified LCA with a timely petition impossible.

8 C.F.R. 214.2(h)(4)(iii)(B)(1) states that, "(b)efore filing a petition for H-1B classification . . . the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application . . . . "

8 C.F.R. 214.2(h)(4)(i)(B) further states that, with the petition, "(t)he petitioner shall submit . . . (a) certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary."

The regulations contain no exception to excuse filing the petition without a previously approved LCA. The petitioner did not possess the requisite certified LCA at the time the petition was filed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.